

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

WILLIE JAMES STEWART, Petitioner

V.

NO. 4:94CV138-B-O

J. STEWART MURPHY, ET AL, Respondents

O P I N I O N

Petitioner, Willie James Stewart, an inmate at the Mississippi State Penitentiary, files this petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 seeking to go before the next available parole board and that he be granted parole release in that he qualifies under the factors that should be considered in determining whether to grant parole.

Petitioner alleges that he has been denied parole at least seven times since he was first considered for parole in January, 1983. He further alleges that on each occasion the only factor considered by the board was the nature of his criminal offense, and the only explanation given for the board's decisions being that petitioner's release would not be in the "best interest of society," or because of "the nature of the crime". He also complains that the parole board in 1985 gave him an eighteen (18) month set-off before he can be considered again for parole. He contends that these periods were improper because on all other occasions he was given a one year set-off, and the longer periods were not authorized by the state legislature.

Petitioner has also filed a Motion for Acceleration and\or Advancement of this matter under Rule 72(a) of the Federal Rules of Civil Procedure. Petitioner has been incarcerated for twenty-six (26) years and contends that advancing this cause is therefore appropriate.

After carefully considering the allegations of this pro se petition to determine if constitutional issues are raised, and giving petitioner's allegations the liberal interpretation required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusions.

Grounds 1 and 2

In Grounds 1 and 2 petitioner alleges that the Mississippi State Parole board denied proper consideration for release at his parole hearings and improperly failed to furnish detailed written statements explaining the recourse for denial of parole.

Liberally construing petitioner's pleading it appears that he may be attempting to allege a claim under the equal protection clause. The equal protection clause does not require absolute equality. Ross v. Moffitt, 417 U.S. 600, 612 (1974). To state that rights under the equal protection clause have been violated, petitioner must allege that the violation was based on an intentional discrimination. Lavernia v. Lynaugh, 845 F.2d 493, 496 (5th Cir. 1988) (citing Washington v. Davis, 426 U.S. 229, 239 (1976)). The intentional discrimination "implies that the decisionmaker singled out a particular group for disparate treatment and selected his course of action at least in part for

the purpose of causing its adverse effects on the identifiable group." Id. (quoting Shango v. Jurich, 681 F.2d 1091, 1104 (7th Cir. 1982) (citing Personnel Administrator of Massachusetts v. Feeny, 442 U.S. 256 (1979))).

More specifically, the procedures used by the officials of the Mississippi Department of Corrections in determining eligibility for parole are matters left to the discretion of the Parole Board. Scales v. Mississippi State Parole Board, 831 F.2d 565 (5th Cir. 1987); Irving v. Thigpen, 732 F.2d 1215 (5th Cir. 1984).

Petitioner makes no showing that the Parole Board abused its discretion and has failed to allege any facts to establish that the defendants purposefully and intentionally discriminated against him in conducting the parole proceedings.

Further, the lack of a written statement of reasons for the Board's decision to deny parole does not amount to a deprivation of constitutional rights. Johnson v. Wells, 566 F.2d 1016, 1017 (5th Cir. 1978). See also, Scales and Irving, supra.

Grounds 3 and 4

Petitioner claims that his "set-off" times were arbitrarily increased and were not authorized by the state legislature. He states that he went before the parole board and received set-off times as follows:

January 4, 1983	-	one (1) year set-off
December 18, 1984	-	one (1) year set-off
November 27, 1985	-	eighteen (18) month set-off
December 12, 1987	-	one (1) year set-off

April 10, 1990	-	one (1) year set-off
April 18, 1991	-	one (1) year set-off
April 9, 1992	-	five (5) year set off

These facts are virtually identical to those in Hunter v. Murphy, No. 92-7747 (5th Cir. March 31, 1993), in which the Court of Appeals remanded the case to the District Court so that the lower court could determine whether prior practice had created a constitutionally protected liberty interest in annual parole consideration. Hunter, id., is now pending before this court, as is a motion to assert a class claim.

Conclusion

Considering the allegations contained in the petition, no arguable factual or legal basis for a claim of constitutional dimension exists for the wrongs asserted in Grounds 1 and 2 entitling petitioner to the relief sought, it is the opinion of the court that these two grounds be dismissed without hearing for failure to state a claim upon which relief can be granted.¹

Grounds 3 and 4 shall be further considered by the court. If the class is certified, the court will construe this petition as a Motion for Leave to Intervene. If there is no

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The Motion to Accelerate is denied. There is no showing of a need for immediacy or that petitioner would be harmed if the case proceeds in due course.

class certification this case shall proceed individually on these two grounds.

A final judgment in accordance with this opinion will be entered.

This the _____ day of _____, 1994.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT COURT JUDGE